



Testimony of Connecticut Fund for the Environment

Joined by:

Clean Water Action
&
Rivers Alliance

Before the Energy & Technology Committee

In Opposition to certain sections of
S.B. 5271, AN ACT CONCERNING THE SITING COUNCIL

Submitted by
Charles J. Rothenberger, Staff Attorney
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Connecticut Fund for the Environment ("CFE") is a non-profit environmental organization with over 5,400 members statewide. The mission of CFE is to protect and improve the land, air and water of Connecticut and Long Island Sound. For more than twenty-five years, CFE has used legal and scientific expertise to bring people together to achieve results that benefit our environment for current and future generations.

Senator Fonfara, Representative Nardello and members of the Committee, Connecticut Fund for the Environment is pleased to have the opportunity to comment on H.B. 5271, An Act Concerning The Siting Council on behalf of itself as well as Clean Water Action and Rivers Alliance.

We have serious concerns about the language in Section 1 of this bill, which is proposed to be added to the Connecticut General Statutes as Section 16-50p (j), which language states:

(j) Upon a motion of a party or intervenor or a council determination that any party or intervenor relating to a facility described in subdivision (5) or (6) of subsection (a) of section 16-50i has intentionally omitted or misrepresented a material fact in the course of a council proceeding, the council may, by majority vote, request the Attorney General to bring a civil action against such party or intervenor. In any such action, the Attorney General may seek any legal or equitable relief the Superior Court deems appropriate, including, but not limited to, injunctive relief or a civil penalty of not more than ten thousand dollars and reasonable attorney fees and related costs.

None of our organizations condone submitting testimony whose purpose is to mislead or distort the facts in any proceeding. Nevertheless, we recognize the importance and value of encouraging broad public participation in state proceedings which involve matters of public concern and community welfare. We also recognize that many, if not most, of the facts that are submitted by applicants as well as intervenors in most proceedings are the subject of vigorous disagreement among experts for one side or the other.

We believe that this provision could have the unintended consequence of chilling public participation in Siting Council proceedings due to the inherent difficulty of determining intent regarding what may constitute an "intentional omission or misrepresentation of a material fact," as opposed to inadvertence or evidence and testimony offered in good faith that may nevertheless be subject to differing opinions regarding its credibility.

Given the relatively stiff penalties envisioned in the proposed bill, including a civil penalty of up to ten thousand dollars, many well-intentioned parties may not feel that participation is worth the risk. Even if a party is ultimately vindicated of any intentional misrepresentation or omission, they could be out-of-pocket several thousand dollars for attorney costs.

In addition to the above concern, this language could give rise to potential abuses whereby applicants urge legal action against parties specifically to deter participation.

A siting process in which the public is effectively silenced does the state and its citizens a grave disservice and undermines the credibility and legitimacy of every siting decision.

We urge the Committee to strike subsection (j) of section 1 of HB 5271 before any further action is taken on the bill.

Thank you for the opportunity to comment.